

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Scott Malcolm and Tim McGough, as Trustees of the Carpenters & Joiners Welfare Fund, Twin City Carpenters Pension Master Trust Fund, and Twin City Carpenters Vacation Fund; Scott Malcolm as Trustee of the Carpenters and Joiners Apprenticeship and Journeymen Training Trust Fund, and each of their successors,

Richard Felber and Rob Hannibal, as Trustees of the Plasterers & Cabinet Makers Health Fund, Richard Felber and David Hamilton, as Trustees of Local 265 Pension Fund, Richard Felber and Rob Hannibal, as Trustees of the Twin City Plasterers Journeyman and Apprentice and Training Fund, John Nesse and Kenneth Haug, as Trustees of Local 190 Pension Fund, William Grimm and Richard Felber, as Trustees of the Minnesota Lathing and Plastering Bureau; and each of their successors,

Civil No. 07-2676 (DWF/AJB)

Plaintiffs,

v.

Gausman Plastering & Stucco, Inc.,

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER FOR ENTRY OF DEFAULT**

Defendant.

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Pamela Hodges Nissen, Esq., McGrann Shea Anderson Carnival Straughn & Lamb, Chtd, counsel for Plaintiffs.

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This matter was heard before the undersigned on the 28th day of September, 2007.

Amy Court of McGrann Shea Anderson Carnival Straughn & Lamb, Chartered, appeared for and on behalf of the Plaintiffs. There was no appearance on behalf of the Defendant.

## FINDINGS OF FACT

1. The Summons and Complaint were filed with the Court on June 8, 2007. The service was accomplished upon Defendant on June 11, 2007.
2. Defendant has failed to file and serve a response or Answer to the Summons and Complaint.
3. Plaintiffs are trustees and fiduciaries of the above-referenced funds (the Funds). The Funds are multi-employer plans as defined by 29 U.S.C. § 1002(37). They are established to provide, *inter-alia*, pension, health and welfare vacation benefits and training to employees doing work in the construction trades, and are maintained for the benefit of workers pursuant to Collective Bargaining Agreements. All contributions must be made and all reports must be submitted to Wilson McShane, 3001 Metro Boulevard, Suite 500, Bloomington, MN 55425, as the administrative agent designated by the Trustees.
4. Defendant, through its membership in the Minnesota Drywall and Plaster Association (f/k/a Minnesota Wall and Ceiling Contractors Association), is bound by certain Collective Bargaining Agreements between the Association and Lathers Local #190 and Minneapolis Plasterers Local #265.
5. The Collective Bargaining Agreements obligate Defendant, as an employer, to compute the contribution for each employee, submit that information on a report form, and pay those contributions to the Funds' Agent on or before the 15<sup>th</sup> day of the month following the month for which the contribution is being made.

6. The Collective Bargaining Agreements and Trust Agreements provide that an employer is liable for an additional 10% of all contributions, which are not timely submitted, for liquidated damages, and also provides that Plaintiffs are entitled to their attorney fees and costs.

7. Defendant has failed to timely submit the fringe fund reports and contributions for the months of April, May, June, and July, 2007.

8. After filing of the Complaint and Motion for Entry of Default, Defendant submitted the fringe fund reports and contributions for the months of April, May, June, and July, 2007. The amount due for fringe benefit contributions for these months was \$46,729.12. Per the terms of the Collective Bargaining Agreements, the total amount due for liquidated damages for the months of April, May, June, and July, 2007 is \$4,672.91.

9. Defendant is entitled to a credit of \$46,729.12 for various payments received.

### **CONCLUSIONS OF LAW**

1. Defendant is in default, and Plaintiffs are entitled to Entry of Judgment.
2. The amount due for fringe benefit contributions for the months of April, May, June, and July, 2007 is \$46,729.12.
3. The amount due for liquidated damages for the months of April, May, June, and July, 2007 is \$4,672.91.
4. Defendant is entitled to a credit of \$46,729.12.
5. Defendant owes \$2,611.37 for attorney fees and costs.

**ORDER**

**IT IS ORDERED:**

1. That Plaintiffs' Motion for Entry of Judgment (Doc. No. 3) is **GRANTED**.
2. That judgment in the amount of \$7,284.28 shall be entered against

Defendant GAUSMAN PLASTERING & STUCCO, INC. in favor of the Plaintiffs.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: September 28, 2007

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court